

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

February 13, 2009

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

MAUI

Approval of construction plans for General Lease No. S-5276,  
Brendan Balthazar, Kaupo, Hana, Maui, Tax Map Key: (2) 1-8-  
1:3

BACKGROUND:

Brendan Balthazar is the current and original lessee under General Lease No. S-5276. He obtained the lease at a public auction held on February 25, 1993 on Maui. The subject land contains approximately 1,565 acres. The lease commenced on March 27, 1993 and expires on March 26, 2018. The upset rent was \$20,000 per annum.

The Board on December 10, 1999, under agenda Item D-18 authorized a 20-year lease extension, expiring on March 26, 2038 and consented to a \$100,000 loan from Farm Credit Services of Hawaii.

Sometime around 2000, Mr. Balthazar constructed several improvements on the State property. Mr. Balthazar sends his workers out in the field to repair fences and maintain the premises for several days at a time to minimize travel time and increase productivity within the large area covered by the lease. These structures are used by his workers for brief stays in the remote areas of the property when they are working on the ranch. The structures are necessary for the effective operation of Mr. Balthazar's cattle and pasture operations and provide his workers temporary shelter from the natural elements on the slopes of Haleakala, which at times can be quite severe. The improvements are also used to support his ranching operations as remote equipment and supply storage areas. No County of Maui, Building Department permits were required. After completing the structures, Mr. Balthazar became aware of the prior approval requirement under the lease and sought to correct that oversight by consulting with then-Chairperson of the Board of Land and Natural Resources Michael Wilson. By Mr. Balthazar's invitation, Chairperson Wilson and Clayton Hee visited the premises and gave Mr. Balthazar assurances that the structures were fine and would not present a problem under the lease. Over the course of the next several years,

District Land Agents Phil Ohta and Jason Koga inspected the property and the structures and reported that the lessee was in compliance with all terms of the lease.

In 2008, due to an unrelated complaint, District Land Agent Daniel Ornellas and Land Agent Larry Pacheco inspected the property and noted the presence of the structures. This request arises out of that site visit.

ANALYSIS:

Standard provision within the a DLNR lease states as follows: The Lessee shall not at any time during the term construct, place, maintain and install on the premises any building, structure or improvement of any kind and description except with the prior written approval of the Board and upon those conditions the Board may impose, including any adjustment of rent, unless otherwise provided in this lease. The Lessee shall own these improvements until the expiration or termination pursuant to a breach of the lease, at which time the ownership shall, at the option of the Lessor, remain and become the property of the Lessor or shall be removed by Lessee, at its sole cost and expense.

Staff is recommending approval because the mitigating factors in this matter support an equitable resolution that would likely have occurred if Mr. Balthazar had approached the Board prior to constructing his structures. Mr. Balthazar's justification for the structures is in accord with prudent and effective ranching practices on large parcels of land. Mr. Balthazar informed the Department as early as 2001 about the structures in question and was given assurances on several occasions the he was in compliance and that the structures would pose no problem under the lease. Mr. Balthazar relied on those assurances and continued to operate his cattle and pasture operations in an otherwise responsible manner.

Staff considered the imposition of a fine but decided against such action since there was no criminal or malicious intent, and the actions did not injure the resources. Staff notes this does not involve an illegal improvement or unauthorized activity on unencumbered lands whereby the Land Board has previously imposed fines. Staff further notes while other types of lease violations are resolved by removal or forfeiture, this case does not appear to warrant such severe repercussions.

Lessee has submitted construction plans for the structures, a true and correct copy of which is attached as Exhibit A and incorporated herein. As a condition to this approval, Lessee, at his own cost, shall comply with any and all county building and zoning requirements applicable to the subject structures.

RECOMMENDATION: That the Board:

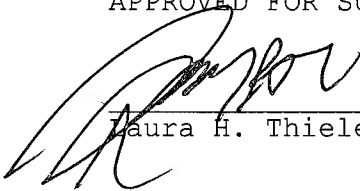
1. Grant approval of Mr. Brendan Balthazar construction plans for General Lease No. S-5276.
2. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Charlene E. Unoki  
Assistant Administrator

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



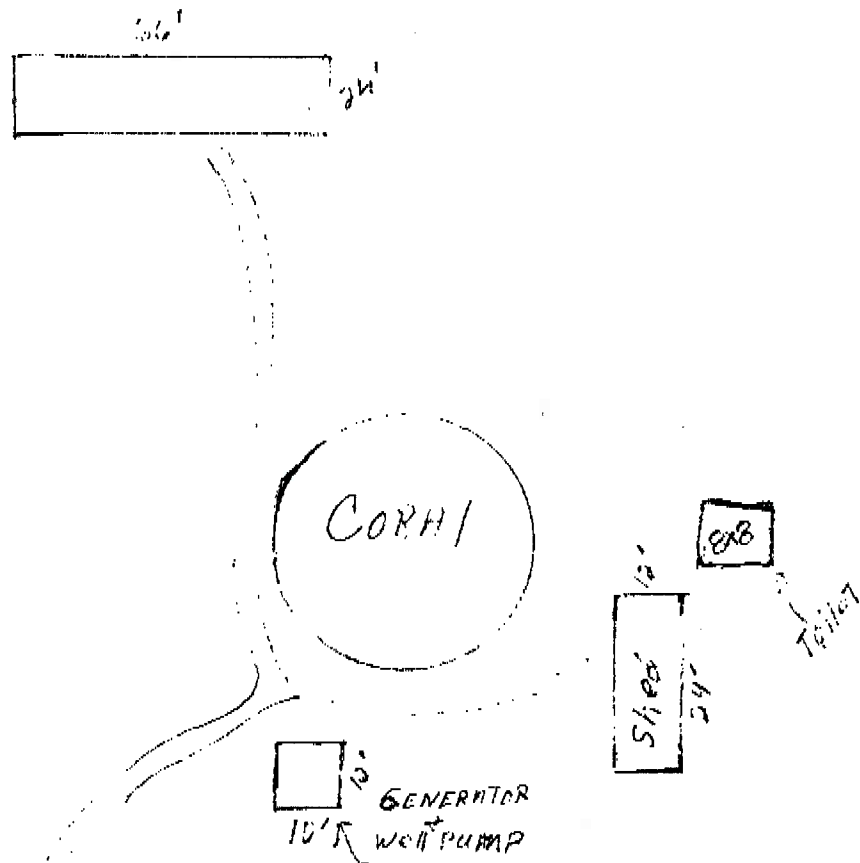


EXHIBIT "A"



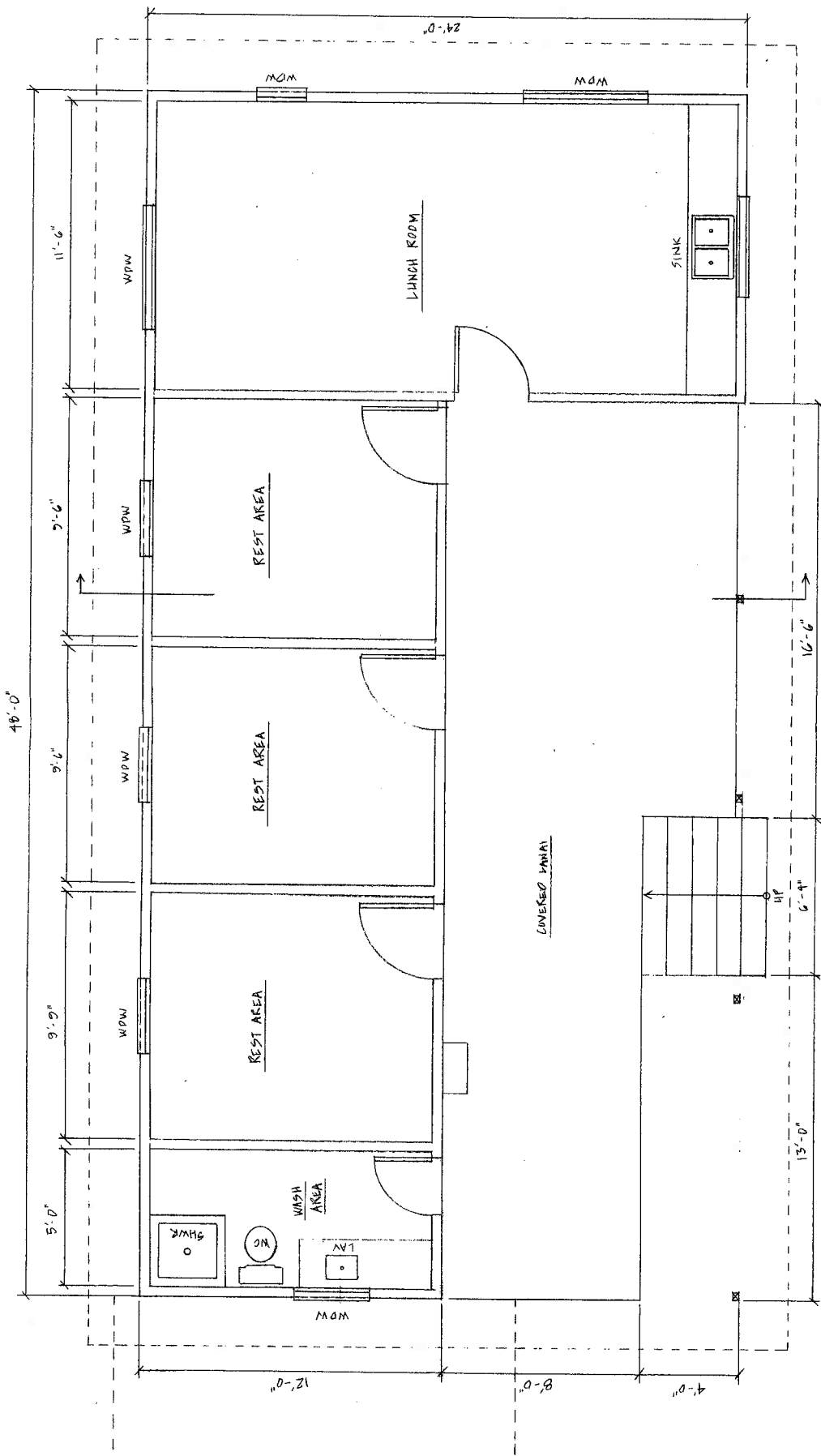
**EXHIBIT "B"**





EXHIBIT "C"

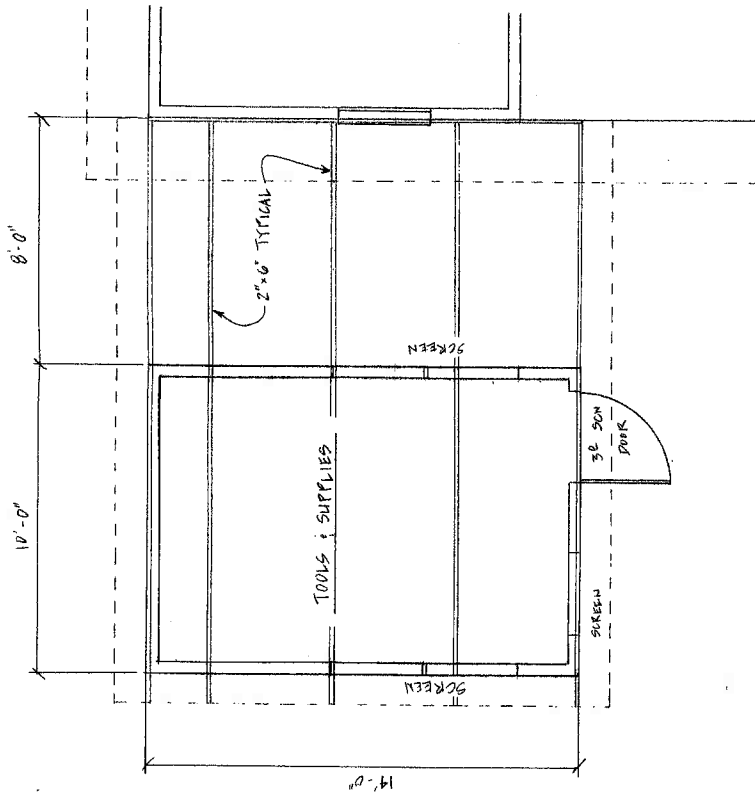




FLOOR PLAN - 1  
SCALE: 1/4" = 1'-0"

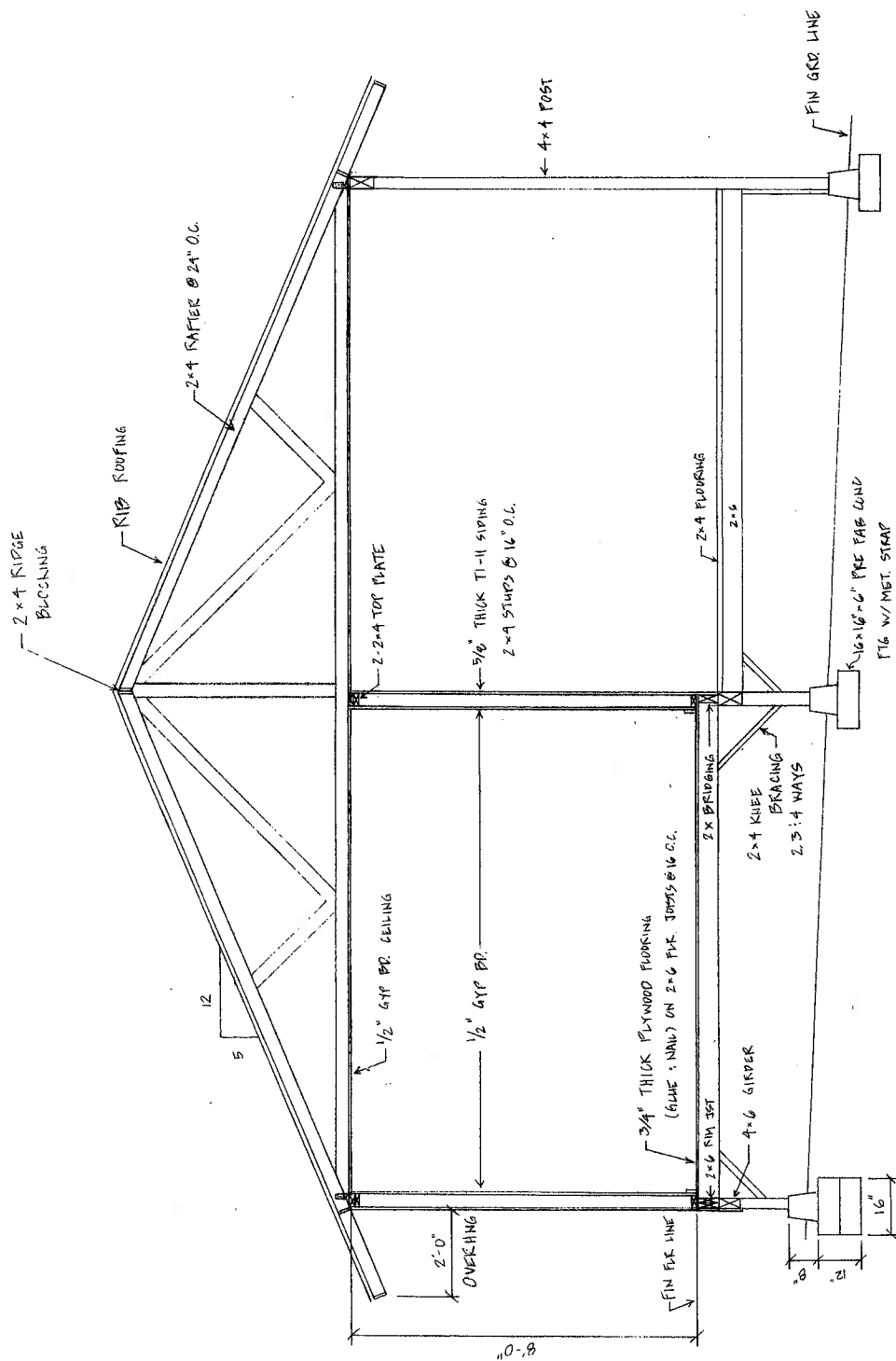
DIAMOND B STORAGE SHED  
FLOOR PLAN - 1  
SHEET 1 OF 4





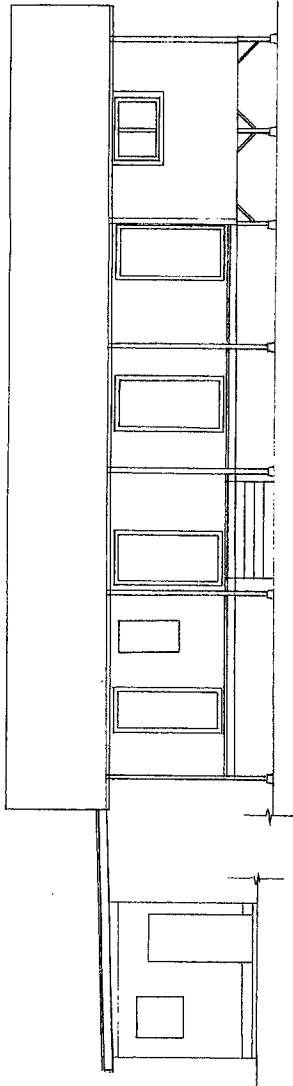
FLOOR PLAN - 2  
SCALE: 1/4" = 1'-0"

DIAMOND B STORAGE SHED  
FLOOR PLAN - 2  
SHEET 2 OF 4

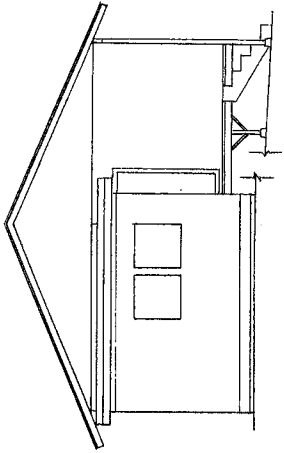


CROSS SECTION  
SCALE: 3/16" = 1'-0"

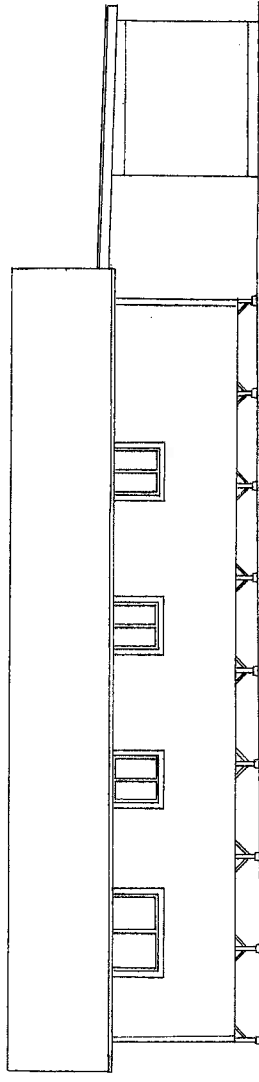
DIAMOND B STORAGE SHED  
CROSS SECTION  
SHEET 3 OF 4



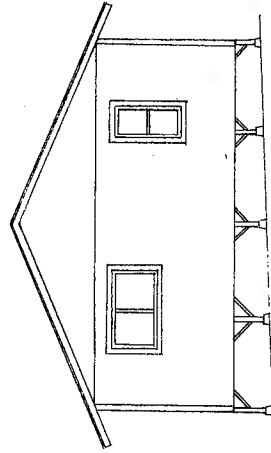
FRONT ELEVATION



LEFT ELEVATION



REAR ELEVATION



RIGHT ELEVATION

EXTERIOR ELEVATIONS

SCALE: 1/8" = 1'-0"

DIAMOND B STORAGE SHED  
ELEVATION  
SHEET 4 OF 4

**EXHIBIT "H"**